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Attorneys for Defendant and Counterclaimant  
FREETECH, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ECHOSTAR SATELLITE L.L.C.,  
ECHOSTAR TECHNOLOGIES  
CORPORATION, and NAGRASTAR L.L.C.,

**Plaintiffs,**

VS.

FREETECH, INC. and DOES 1-10,

## Defendants.

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## FREETECH, INC.,

#### **Counterclaimant,**

24

vs.

ECHOSTAR SATELLITE L.L.C.,  
ECHOSTAR TECHNOLOGIES  
CORPORATION, and NAGRASTAR L.L.C.,

#### **Counter-defendants.**

**Case No. 07-6124 (JW)**

**DEFENDANT FREETECH, INC.'S  
AMENDED ANSWER AND  
COUNTERCLAIMS**

## **DEMAND FOR JURY TRIAL**

1 Freetech, Inc. ("Freetech") responds to the Plaintiffs' Complaint as follows:

2 1. Freetech denies the allegations of paragraph 1 of the Complaint.

3 2. Freetech lacks enough information to admit or deny the allegations of paragraph 2 of  
4 the Complaint and therefore denies the allegations.

5 3. Freetech lacks enough information to admit or deny the allegations of paragraph 3 of  
6 the Complaint and therefore denies the allegations.

7 4. Freetech lacks enough information to admit or deny the allegations of paragraph 4 of  
8 the Complaint and therefore denies the allegations.

9 5. Freetech lacks enough information to admit or deny the allegations of paragraph 5 of  
10 the Complaint and therefore denies the allegations.

11 6. Freetech lacks enough information to admit or deny the allegations of paragraph 6 of  
12 the Complaint and therefore denies the allegations.

13 7. Freetech denies the allegations of paragraph 7 of the Complaint.

14 8. Freetech lacks enough information to admit or deny the allegations of paragraph 8 of  
15 the Complaint and therefore denies the allegations.

16 9. Freetech lacks enough information to admit or deny the allegations of paragraph 9 of  
17 the Complaint and therefore denies the allegations.

18 10. Freetech lacks enough information to admit or deny the allegations of paragraph 10 of  
19 the Complaint and therefore denies the allegations.

20 11. Freetech admits that it is a California corporation and that its registered agent for  
21 service of process is Heejoun Jin. Freetech denies the remaining allegations of paragraph 11 of the  
22 Complaint.

23 12. Freetech denies the allegations of paragraph 12 of the Complaint to the extent they  
24 require a response.

25 13. Freetech denies the allegations of paragraph 13 of the Complaint.

26 14. Freetech admits that the Court has jurisdiction over this action. Freetech denies the  
27 remaining allegations of paragraph 14 of the Complaint.

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1       15. Freetech admits that the Court has personal jurisdiction over Freetech. Freetech  
2 denies the remaining allegations of paragraph 15 of the Complaint.

3       16. Freetech lacks enough information to admit or deny the allegations of paragraph 16 of  
4 the Complaint and therefore denies the allegations.

5       17. Freetech lacks enough information to admit or deny the allegations of paragraph 17 of  
6 the Complaint and therefore denies the allegations.

7       18. Freetech lacks enough information to admit or deny the allegations of paragraph 18 of  
8 the Complaint and therefore denies the allegations.

9       19. Freetech lacks enough information to admit or deny the allegations of paragraph 19 of  
10 the Complaint and therefore denies the allegations.

11       20. Freetech lacks enough information to admit or deny the allegations of paragraph 20 of  
12 the Complaint and therefore denies the allegations.

13       21. Freetech lacks enough information to admit or deny the allegations of paragraph 21 of  
14 the Complaint and therefore denies the allegations.

15       22. Freetech lacks enough information to admit or deny the allegations of paragraph 22 of  
16 the Complaint and therefore denies the allegations.

17       23. Freetech lacks enough information to admit or deny the allegations of paragraph 23 of  
18 the Complaint and therefore denies the allegations.

19       24. Freetech lacks enough information to admit or deny the allegations of paragraph 24 of  
20 the Complaint and therefore denies the allegations.

21       25. Freetech lacks enough information to admit or deny the allegations of paragraph 25 of  
22 the Complaint and therefore denies the allegations.

23       26. Freetech lacks enough information to admit or deny the allegations of paragraph 26 of  
24 the Complaint and therefore denies the allegations.

25       27. Freetech admits that FTA Receivers are devices that can receive "free-to-air" satellite  
26 television signals, which are either not scrambled or scrambled but available free of charge.  
27 Freetech further admits that "free-to-air" television channels include ethnic, religious, business,  
28 music, information, and advertising content. Freetech lacks enough information to admit or deny the

1 allegations in first two sentences of paragraph 27 of the Complaint and therefore denies the  
2 allegations. Freetech denies the remaining allegations of paragraph 27 of the Complaint.

3 28. Freetech lacks enough information to admit or deny the allegations of paragraph 28 of  
4 the Complaint and therefore denies the allegations.

5 29. Freetech lacks enough information to admit or deny the allegations of paragraph 29 of  
6 the Complaint and therefore denies the allegations.

7 30. Freetech lacks enough information to admit or deny the allegations of paragraph 30 of  
8 the Complaint and therefore denies the allegations.

9 31. Freetech lacks enough information to admit or deny the allegations of paragraph 31 of  
10 the Complaint and therefore denies the allegations.

11 32. Freetech lacks enough information to admit or deny the allegations of paragraph 32 of  
12 the Complaint and therefore denies the allegations.

13 33. Freetech lacks enough information to admit or deny the allegations of paragraph 33 of  
14 the Complaint and therefore denies the allegations.

15 34. Freetech lacks enough information to admit or deny the allegations of paragraph 34 of  
16 the Complaint and therefore denies the allegations.

17 35. Freetech lacks enough information to admit or deny the allegations of paragraph 35 of  
18 the Complaint and therefore denies the allegations.

19 36. Freetech admits that it distributes and promotes the sale of "Coolsat" branded free-to-air  
20 receivers in the United States. Freetech denies the remaining allegations of paragraph 36 of the  
21 Complaint.

22 37. Freetech denies the allegations of paragraph 37 of the Complaint.

23 38. Freetech admits that it imports FTA receivers from a manufacturer in Asia. Freetech  
24 lacks enough information to admit or deny the remaining allegations of paragraph 38 of the  
25 Complaint and therefore denies the allegations.

26 39. Freetech lacks enough information to admit or deny the allegations of paragraph 39 of  
27 the Complaint and therefore denies the allegations.

40. Freetech denies the allegations of the first sentence of paragraph 40 of the Complaint. Freetech lacks enough information to admit or deny the remaining allegations of paragraph 40 and therefore denies the allegations.

41. Freetech denies the allegations of the final sentence of paragraph 41 of the Complaint. Freetech lacks enough information to admit or deny the remaining allegations of paragraph 41 and therefore denies the allegations.

42. Freetech denies the allegations of paragraph 42 of the Complaint.

43. Freetech denies the allegations of paragraph 43 of the Complaint.

44. Freetech denies the allegations of paragraph 44 of the Complaint.

## COUNT I

45. Freetech here incorporates by reference paragraphs 1 through 44 above.

46. Freetech denies the allegations of paragraph 46 of the Complaint.

47. Freetech denies the allegations of paragraph 47 of the Complaint.

48. Freetech denies the allegations of paragraph 48 of the Complaint.

49. Freetech denies the allegations of paragraph 49 of the Complaint.

50. Freetech denies the allegations of paragraph 50 of the Complaint.

51. Freetech denies the allegations of paragraph 51 of the Complaint.

## COUNT II

52. Freetech here incorporates by reference paragraphs 1 through 51 above.

53. Freetech denies the allegations of paragraph 53 of the Complaint.

54. Freetech denies the allegations of paragraph 54 of the Complaint.

55. Freetech denies the allegations of paragraph 55 of the Complaint.

56. Freetech denies the allegations of paragraph 56 of the Complaint.

## COUNT III

57. Freetech here incorporates by reference paragraphs 1 through 56 above.

58. Freetech denies the allegations of paragraph 58 of the Complaint.

59. Freetech denies the allegations of paragraph 59 of the Complaint.

60. Freetech denies the allegations of paragraph 60 of the Complaint.

61. Freetech denies the allegations of paragraph 61 of the Complaint.

## COUNT IV

62. Freetech here incorporates by reference paragraphs 1 through 61 above.

63. Freetech denies the allegations of paragraph 63 of the Complaint.

64. Freetech denies the allegations of paragraph 64 of the Complaint.

65. Freetech denies the allegations of paragraph 65 of the Complaint.

66. Freetech denies the allegations of paragraph 66 of the Complaint.

# COUNT V

67. Freetech here incorporates by reference paragraphs 1 through 66 above.

68. Freetech denies the allegations of paragraph 68 of the Complaint.

69. Freetech denies the allegations of paragraph 69 of the Complaint.

70. Freetech denies the allegations of paragraph 70 of the Complaint.

71. Freetech denies the allegations of paragraph 71 of the Complaint.

72. Freetech denies the allegations of paragraph 72 of the Complaint.

COUNT VI

73. Freetech here incorporates by reference paragraphs 1 through 72 above.

/4. Freetech denies the allegations of paragraph /4 of the Complaint.

75. Freetech denies the allegations of paragraph 75 of the Complaint.

/6. Freetech denies the allegations of paragraph /6 of the Complaint.

77. FreeTech denies the allegations of paragraph 77 of the Complaint.

## DEFENSES

Freetech asserts the following defenses, without regard to whether they are "affirmative" defenses or matters as to which the plaintiffs have the burden of proof.

1. Plaintiffs' Complaint, and each cause of action within it, fails to state a cause of action.

2. Process has been defective.

3. Service of process has been insufficient.

4. Plaintiffs' claims are barred by their failure to join indispensable parties.

- 1 5. Plaintiffs' claims for statutory damages are barred or limited by the U.S. Constitution.
- 2 6. Plaintiffs' claims are barred because Plaintiffs lack standing.
- 3 7. Plaintiffs' remedies are limited by 17 U.S.C. § 1203(c)(5).
- 4 8. Plaintiffs' state law claims are preempted.
- 5 9. Plaintiffs' claims are barred by relevant statutes of limitations.
- 6 10. Plaintiffs' claims are barred by laches.
- 7 11. Plaintiffs' claims are barred by consent, waiver, acquiescence, and license.
- 8 12. Plaintiffs' claims are barred by the doctrine of unclean hands.
- 9 13. Plaintiffs' claims are barred by their failure to mitigate damages.

## 10 COUNTERCLAIMS

11 1. Freetech brings these Counterclaims against Plaintiffs and Counter-defendants  
12 Echostar Satellite L.L.C., Echostar Technologies Corporation, and Nagrastar L.L.C. "Echostar"  
13 shall refer to either Echostar Satellite L.L.C. or Echostar Technologies Corporation, or both. The  
14 Court has jurisdiction over these Counterclaims pursuant to 28 U.S.C. § 1331, 1338, 1367, and 2201.

15 2. Freetech imports and distributes digital satellite receivers within the United States  
16 under its Coolsat brand. Coolsat receivers are so-called Free To Air ("FTA") satellite receivers.

17 3. Presently, Freetech imports and distributes the Coolsat 6100 Private, 7100 miCro-  
18 PVR, and 8100 HD miCro-PVR. The 6100 receives and displays standard-definition satellite  
19 transmissions of television programming. The 7100 also receives and displays standard-definition  
20 transmissions, but also includes a digital Personal Video Recorder ("PVR") that allows recording of  
21 broadcast material. The 8100 receives and displays high-definition ("HD") satellite transmissions of  
22 television programming and includes the PVR.

23 4. Coolsat receivers are primarily designed to receive satellite transmissions. Coolsat  
24 receivers are primarily designed to receive FTA satellite transmissions.

25 5. Satellite receivers capable of receiving satellite transmissions, including FTA  
26 transmissions, have been available to consumers for decades.

27 6. In fact, Echostar Europe has sold "millions of receivers for . . . Free to Air markets."  
28 Echostar Europe states on its website: "DIGITAL TELEVISION DESIGN: Powering the free-to-air

1 revolution.” Freetech is informed and believes, and therefore alleges, that Echostar Europe is a  
2 subsidiary or corporate affiliate of Echostar. Freetech is informed and believes, and therefore  
3 alleges, that Echostar Europe’s satellite receivers and Coolsat receivers perform substantially the  
4 same functions. Attached as Exhibit A are true and correct copies of printouts of web pages from  
5 Echostar Europe’s website.

6       7. FTA satellite transmissions are freely available to anyone with a FTA satellite  
7 receiver such as Freetech’s Coolsat receivers.

8       8. FTA broadcasters do not charge fees to viewers. FTA satellite transmissions are not  
9 scrambled or encrypted. FTA broadcasters want the public to receive their signals.

10     9. Just as terrestrial broadcast television has been profitable for some terrestrial  
11 broadcasters, so FTA satellite broadcasting has been profitable for some FTA satellite broadcasters.

12     10. FTA programming may be financially supported by advertising or by voluntary  
13 contributions from viewers or supporters. In some cases, governments or private organizations fund  
14 FTA programming.

15     11. FTA satellite transmissions offer viewers a rich variety of television programming.

16     12. FTA satellite programming originates from governments; public broadcasters; private  
17 broadcasters, television stations, or networks; and program producers.

18     13. There are hundreds of FTA channels available to the North America viewing  
19 audience, including such channels as PBS, Al Jazeera English, NASA TV, China Central Television  
20 9, and PressTV. Attached as Exhibit B are printouts from websites of these broadcasters advertising  
21 their FTA satellite programming.

22     14. FTA satellite programming not only includes English language content, but also  
23 includes programming in foreign languages and programming produced in foreign countries. FTA  
24 satellite programming offers educational enrichment, news gathering, and cultural experiences that  
25 are simply unavailable on terrestrial broadcasts.

26     15. FTA satellite programming is available in countries throughout the world. In 2004,  
27 sales of satellite receivers for FTA were expected to outpace, for a second year in a row, sales of  
28 satellite receivers tied to subscription service providers, 36 million to 29 million. Data from mid-

1 2007 shows that some 30 to 40 million people in Europe alone are getting their television from FTA  
2 satellite transmissions.

3 16. Satellite transmissions of television programming can also originate from service  
4 providers such as DirecTV or Dish Network, operated by Echostar. Unlike FTA programming,  
5 these pay-TV service providers charge a subscription fee to viewers. As these providers'  
6 programming is often encrypted or scrambled, the providers give subscribers equipment capable of  
7 decrypting or descrambling their transmissions.

8 17. Echostar's Dish Network offers international programming. However, Echostar  
9 charges for this programming, sometimes charging additional monthly fees to access individual  
10 channels or sets of channels. FTA foreign language programming comes with no subscription cost.

11 18. For example, China Central Television 9 ("CCTV-9") makes its satellite broadcasts  
12 freely available to those with an FTA satellite receiver. A Coolsat receiver user could watch CCTV-  
13 9 satellite broadcasts for free. Echostar requires its Dish Network users to pay for access to CCTV-  
14 9. Attached hereto as Exhibit C is a printout of a web page on Dish Network's website showing that  
15 it would cost users \$29.99 per month or \$329.89 a year to receive the "Great Wall TV Package" that  
16 includes CCTV-9. Thus, Dish Network offers to sell subscriptions to satellite broadcasts that are  
17 made freely available to the public.

18 19. Freetech is informed and believes, and therefore alleges, that Plaintiffs and Counter-  
19 defendants want to stifle competition, and want to be the gatekeeper to and toll collector for all  
20 satellite programming, even when broadcasters make their programming legitimately available for  
21 free to those with an FTA satellite receiver such as a Coolsat receiver. Freetech is informed and  
22 believes, and therefore alleges, that Plaintiffs and Counter-defendants seek, through law suits such as  
23 these, to win a stranglehold over the entire satellite television market, including FTA.

24 20. Coolsat devices distributed by Freetech cannot decrypt or descramble Echostar's  
25 encrypted or scrambled transmissions without being modified by the addition of software created by  
26 non-parties.

27 21. Plaintiffs and Counter-defendants have no evidence that Coolsat devices distributed  
28 by Freetech can decrypt or descramble Echostar's encrypted or scrambled transmissions without

1 being modified by the addition of software created by non-parties.

2       22. Freetech does not write, develop, modify, or distribute software that enables the  
3 viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat receivers. Nor does  
4 Freetech test or load any such software on Coolsat devices.

5       23. Plaintiffs and Counter-defendants have no evidence that Freetech writes, develops,  
6 modifies, or distributes software that enables the viewing of Echostar's scrambled or encrypted  
7 satellite transmissions on Coolsat receivers. Nor do Plaintiffs and Counter-defendants have evidence  
8 that Freetech tests or loads any such software on Coolsat receivers.

9       24. Freetech does not provide software that enables the viewing of Echostar's scrambled  
10 or encrypted satellite transmissions on Coolsat receivers to any third party, including David Smith.

11       25. Plaintiffs and Counter-defendants have no evidence that Freetech provides software  
12 that enables the viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat  
13 receivers to any third party, including David Smith.

14       26. Plaintiffs and Counter-defendants complain that Coolsat receivers have data ports that  
15 allow users to send data to their receivers. The data ports on Coolsat receivers, however, allow users  
16 to perform a number of legitimate functions.

17       27. Data ports allow users to install updates to authorized Coolsat firmware. Firmware  
18 updates come out every few months and Freetech provides the latest firmware updates on the  
19 support portion of its website. These updates fix bugs and add improvements to the Coolsat  
20 receivers' operation. Firmware updates allow users to fix and improve their Coolsat device without  
21 having to replace the device or replace hardware. Firmware updates are not unique to Coolsat  
22 receivers. Many electronic devices, including routers, computers, cellphones, and PDAs, all are  
23 designed to accept firmware updates. Consumers expect their electronic devices to be fixable and  
24 upgradeable with firmware. Echostar Europe itself sells FTA receivers that accept firmware updates  
25 and Echostar Europe provides firmware downloads from its website at [www.echostareurope.com](http://www.echostareurope.com).

26       28. In addition, the USB data port on Coolsat receivers facilitates a number of multimedia  
27 applications. For example, users can display digital images and play digital audio files through  
28 televisions and sound systems connected to the Coolsat receiver.

1       29. Freetech does not condone or promote downloading of software that enables the  
2 viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat receivers.

3       30. Freetech does not advertise on websites that provide or link to software that enables  
4 the viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat receivers.

5       31. Freetech is not in the business of intercepting scrambled or encrypted satellite  
6 transmissions.

7       32. Freetech has never intercepted Echostar's scrambled or encrypted satellite  
8 transmissions.

9       33. Plaintiffs and Counter-defendants have no evidence that Freetech has intercepted  
10 Echostar's scrambled or encrypted satellite transmissions.

11       34. Freetech has never assisted others in the interception of Echostar's scrambled or  
12 encrypted satellite transmissions.

13       35. Plaintiffs and Counter-defendants have no evidence that Freetech has assisted others  
14 in the interception of Echostar's scrambled or encrypted satellite transmissions.

15       36. No marketing or advertising material that Freetech uses in connection with its import  
16 and distribution of any Coolsat receiver discusses using the receivers to decrypt or descramble  
17 Echostar's encrypted or scrambled programming.

18       37. No user manual or other material that comes with any Coolsat receiver discusses  
19 using the receivers to decrypt or descramble Echostar's encrypted or scrambled programming.

20       38. On the contrary, when Coolsat users visit Freetech's website, they are told that they  
21 must agree to "not use Coolsat products in any way whatsoever to intercept any satellite television  
22 signal without proper authorization."

23       39. Further, in the support portion of Freetech's website, which contains the authorized  
24 Coolsat firmware updates, Freetech warns consumers that "Coolsat receivers are only for use with  
25 Coolsat authorized software. Unauthorized software cannot, by any means, be used with a Coolsat  
26 receiver. Should any receiver contain such unauthorized software, the warranty will be null and  
27 void."

28       40. Freetech requires its distributors to "agree not to engage in . . . practices" that include

1 “downloading of unauthorized third-party software or other methods to decrypt subscription-based  
2 programming systems.”

3       41. Coolsat satellite receivers are not primarily designed or produced for the purpose of  
4 circumventing a technological measure that effectively controls access to a work protected under  
5 copyright law. Freetech does not design, produce, or specify the design of Coolsat satellite receivers  
6 for the purpose of circumventing a technological measure that effectively controls access to a work  
7 protected under copyright law.

8       42. Coolsat satellite receivers are not primarily designed or produced for the purpose of  
9 circumventing protection afforded by a technological measure that effectively protects a right of a  
10 copyright owner in a work or a portion thereof. Freetech does not design, produce, or specify the  
11 design of Coolsat satellite receivers for the purpose of circumventing protection afforded by a  
12 technological measure that effectively protects a right of a copyright owner in a work or a portion  
13 thereof.

14       43. It is not the case that Coolsat satellite receivers have only limited commercially  
15 significant purpose or use other than to circumvent a technological measure that effectively controls  
16 access to a work protected under copyright law.

17       44. It is not the case that Coolsat satellite receivers have only limited commercially  
18 significant purpose or use other than to circumvent protection afforded by a technological measure  
19 that effectively protects a right of a copyright owner in a work or a portion thereof.

20       45. Freetech, or another acting in concert with Freetech with Freetech’s knowledge, does  
21 not market Coolsat receivers for use in circumventing a technological measure that effectively  
22 controls access to a work protected under copyright law.

23       46. Freetech, or another acting in concert with Freetech with Freetech’s knowledge, does  
24 not market Coolsat receivers for use in circumventing protection afforded by a technological  
25 measure that effectively protects a right of a copyright owner in a work or a portion thereof.

26       47. Freetech could not know or have reason to know that Coolsat receivers are primarily  
27 of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home  
28 satellite services, or are intended for any other activity prohibited by 47 U.S.C. § 605(a), because

Coolsat receivers are not primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or are intended for any other activity prohibited by 47 U.S.C. § 605(a).

48. Plaintiffs and Counter-defendants have not paid money or given property to Freetech. Plaintiffs and Counter-defendants have no evidence that they paid money or gave property to Freetech. Any revenues Freetech has made from importing and distributing Coolsat receivers has come from non-parties.

49. Freetech has no money or property which Plaintiffs and Counter-defendants once owned. Moreover, Freetech has no money or property in which Plaintiffs and Counter-defendants have a vested interest. Plaintiffs and Counter-defendants have no evidence that Freetech has money or property which Plaintiffs and Counter-defendants once owned or in which Plaintiffs and Counter-defendants have a vested interest.

50. Freetech brings these counterclaims for declaratory relief based upon explicit threats and actual litigation by Plaintiffs and Counter-defendants against Freetech. An actual case or controversy exists within the meaning of 28 U.S.C. § 2201 as to whether Freetech bears liability pursuant to the claims threatened by Plaintiffs and Counter-defendants in this action. A judicial determination is necessary and appropriate at this time so that the parties may ascertain their respective rights and obligations, if any.

## **FIRST CAUSE OF ACTION**

## **Declaration Of No Violation Of the Digital Millennium Copyright Act**

51. Freetech incorporates and realleges paragraphs 1 through 50 of the Counterclaims above.

52. Plaintiffs and Counter-defendants allege that Freetech has violated 17 U.S.C. §§ 1201(a)(2), (b)(1).

53. Based on the circumstances described above, Freetech has not engaged in a violation of 17 U.S.C. §§ 1201(a)(2), (b)(1) and is entitled to a declaration to that effect.

## **SECOND CAUSE OF ACTION**

## **Declaration Of No Violation Of Section 605(a) of the Communications Act**

54. Freetech incorporates and realleges paragraphs 1 through 53 of the counterclaims above.

55. Plaintiffs and Counter-defendants allege that Freetech has violated 47 U.S.C. § 605(a).

56. Based on the circumstances described above, Freetech has not engaged in a violation of 47 U.S.C. § 605(a) and is entitled to a declaration to that effect.

## **THIRD CAUSE OF ACTION**

**Declaration Of No Violation Of Section 605(e)(4) of the Communications Act**

57. Freetech incorporates and realleges paragraphs 1 through 56 of the counterclaims above.

58. Plaintiffs and Counter-defendants allege that Freetech has violated 47 U.S.C. § 605(e)(4).

59. Based on the circumstances described above, Freetech has not engaged in a violation of 47 U.S.C. § 605(e)(4) and is entitled to a declaration to that effect.

## **FOURTH CAUSE OF ACTION**

## **Declaration Of No Violation Of the Electronic Communications Privacy Act**

60. Freetech incorporates and realleges paragraphs 1 through 59 of the counterclaims above.

61. Plaintiffs and Counter-defendants allege that Freetech has violated 18 U.S.C. § 2520(a).

62. Based on the circumstances described above, Freetech has not engaged in a violation of 18 U.S.C. § 2520(a) and is entitled to a declaration to that effect.

## **FIFTH CAUSE OF ACTION**

## **Declaration Of No Violation Of California's Bus. & Profs. Code § 17200**

63. Freetech incorporates and realleges paragraphs 1 through 62 of the counterclaims above.

64. Plaintiffs and Counter-defendants allege that Freetech has violated California's Bus. & Profs. Code § 17200

65. Based on the circumstances described above, Freetech has not engaged in a violation of California's Bus. & Profs. Code § 17200 and is entitled to a declaration to that effect.

## **FIFTH CAUSE OF ACTION**

# **Declaration Of No Unjust Enrichment**

66. Freetech incorporates and realleges paragraphs 1 through 65 of the counterclaims above.

67. Plaintiffs and Counter-defendants allege that Freetech has been unjustly enriched at the expense of Plaintiffs and Counter-defendants.

68. Based on the circumstances described above, Freetech has not been unjustly enriched at the expense of Plaintiffs and Counter-defendants and is entitled to a declaration to that effect.

## **PRAYER FOR RELIEF**

Freetech seeks relief as follows:

- a. That the Court enter judgment in favor of Freetech and against Plaintiffs and Counter-defendants on all causes of action of their Complaint;
  - b. That the Court enter judgment in favor of Freetech and against Plaintiffs and Counter-defendants on all causes of action of Freetech's Counterclaims;
  - c. That the Court award Freetech costs of suit, including attorney's fees; and
  - d. That the Court grant such additional relief as is just and equitable.

## **DEMAND FOR JURY TRIAL**

Freetech hereby demands a jury trial for all issues triable by jury.

Dated: January 16, 2008

Respectfully submitted,  
WINSTON & STRAWN LLP  
By: /s/

Andrew P. Bridges  
Jennifer A. Golinveaux  
Matthew A. Scherb

LAW OFFICE OF JONATHAN BAE  
By: /s/

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Jonathan Bae

Attorneys for Defendant and Counterclaimant  
Freetech, Inc.

## **CONCURRENCE IN FILING**

The other signatories above concur in the filing of this pleading.

Dated: January 16, 2008

By: /s/

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Matthew A. Scherb

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